

RECEIVED
SDNY PRO SE ORG/M IN THE UNITED STATES DISTRICT COURT

2023 FEB 14 AM 10: FOR THE SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,) Crim No. SI 06 Cr. 911 (AKH)
Respondent,) Civ. No. 14 CV-3228)
) Judge Alvin K. Hellerstein
vs.)
)
RODERICK GUNN,)
Defendant.)

MOTION TO REOPEN SECTION 2255 TO ADDRESS A VIOLATION

UNDER NAPUE V. ILLINOIS PURSUANT TO RULE 60(b),

FED. R. CIV. P., AND TO RESET TIMING TO FILE NOTICE

OF APPEAL IN CASE NO. 14 CV-3228

COMES NOW, Roderick Gunn, pro se, and respectfully moves this Court on Motion pursuant to Rule 60(b)(6), to reopen his section 2255 case relating to United States v. Gunn, 14 CV-3228 (WHP), to address Gunn's Napue violation that the district court did not address before it denied the Ineffective Assistance portion of said § 2255.

I. Procedural facts of 14-CV-3228

After Gunn's direct appeal was final in SI 06 Cr. 911, he filed a habeas motion pursuant to 28 U.S.C. § 2255. In this motion, Gunn raised numerous claims, including ineffective

assistance claims.

Gunn also filed a Motion for Leave to Supplement his § 2255 with newly discovered evidence in the form of § 3500 materials that proved that a Napue violation occurred. The Court granted the Motion for Leave, and Gunn filed his Supplement, with exhibits in the form of § 3500 materials and trial transcripts.

After the Supreme Court pronounced its rule in Johnson, 135 S. Ct. 2551 (2015), Gunn filed an Amendment under Rule 15, Fed. R. Civ. P., arguing that § 924(c) residual clause is unconstitutional, and his §§ 924(c) and 924(j) convictions and sentences were therefore unconstitutional. Counsel was appointed to Gunn's Johnson claim, and the case was placed on hold. Then on March 7, 2017, the former Judge William H. Pauley denied Gunn's ineffective assistance of counsel claims made in 14-CV-3228. However, the Court reserved judgment on Gunn's arguments pursuant to Johnson v. United States, 135 S. Ct. 2551 (2015). The Court ordered the Clerk to close Case Number 14-CV-3228, and open 16-CV-4887 with the Johnson claims, pending further briefing from the Federal Defenders of New York. Thus, Case No. 14-CV-3228 was marked closed. See Civil Docket, No. 4.

In denying Gunn's ineffective assistance of counsel claims, the district court did not address his Napue claims adequately--even though the Government did not state there were no due process violation under Napue v. Illinois, as Gunn argued. Thus, the Napue claim was never adjudicated according to the standards established by the Second Circuit or United States v. Agurs, 427 U.S. 97 (1976).

After the court denied the ineffective assistance of counsel section of 14-CV-3228, Gunn filed a Notice of Appeal, and a request to file a Certificate of Appealability ("COA"). However, the Second Circuit held that Gunn's request for a COA was not ripe and therefore his Notice To Appeal was moot because the entire § 2255 case was not final. The Second Circuit arrived at this conclusion because Gunn's Johnson claim was still pending in the new Case No. 16-CV-4887. Therefore, Gunn did not get an opportunity to seek a COA to appeal the denial of his ineffective assistance of counsel claims, nor the other claims the court denied in 14-CV-3228.

II. Grounds For Relief

This Court has inherent authority to reopen Gunn's § 2255 in Case No. 14-CV-3228 to adjudicate his Napue violation claim and Impermissible Bolstering claim that the district court had granted leave for him to file in a Supplemental Brief. In addition, this Court has authority to reopen the § 2255 in Case No. 14-CV-3228 to reset Gunn's time to file a Notice Of Appeal to seek a COA to appeal the denial of his ineffective assistance of counsel claims. Because the Johnson claim that was preserved in Case No. 16-CV-4887 resulted in a vacatur of Counts Six and Seven, and a Resentencing Hearing scheduled for March 23, 2023, Gunn respectfully request that the Court enter an Order to reopen 14-CV-3228 [before] it enter a final judgment in 16-CV-4887 ("The resentencing hearing"). Gunn request that the Court enter an Order to reopen the § 2255 in Case No. 14-CV-3228, namely, Gunn's Napue claim so

that he can seek the appropriate judicial relief before the resentencing is done.

For all the foregoing reasons, Roderick Gunn respectfully request that the relief sought be granted. Gunn also request to join in on any Napue violation Motions codefendant Alton Davis files.

Dated: January 30 2023

Respectfully Submitted,

R. Gunn

Roderick Gunn

CAPTION:

UNITED STATES OF AMERICA

CERTIFICATE OF SERVICE*

Docket Number: 14 CV 3228

v.

RODERICK GUNN

I, Roderick Gunn, hereby certify under penalty of perjury that
 (print name)
 on January 30, 2023, I served a copy of Motion to Reopen § 2255
 (date) To Address a Nolle Violation Claim in Case No. 14 CV 3228
 (list all documents)

by (select all applicable)**

Personal Delivery United States Mail Federal Express or other
 Overnight Courier

Commercial Carrier E-Mail (on consent)

on the following parties: U.S. Attorney's Office

<u>Kedah Bhatia</u> ,	<u>One Saint Andrews Plz</u> ,	<u>New York</u> ,	<u>N.Y.</u>	<u>10007</u>
Name	Address	City	State	Zip Code

Name	Address	City	State	Zip Code
------	---------	------	-------	----------

Name	Address	City	State	Zip Code
------	---------	------	-------	----------

Name	Address	City	State	Zip Code
------	---------	------	-------	----------

*A party must serve a copy of each paper on the other parties, or their counsel, to the appeal or proceeding. The Court will reject papers for filing if a certificate of service is not simultaneously filed.

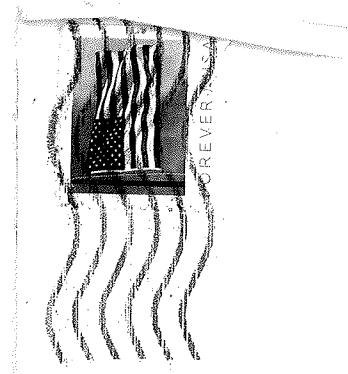
**If different methods of service have been used on different parties, please complete a separate certificate of service for each party.

1/30/2023

Today's Date

R. Gunn

Signature



SACRAMENTO CA 957
FEE 2023 PINS
SDNY PRO SE OFFICE

Roderick Gunz
Reg No. 55254-054
United States Penitentiary
P.O. Box 049001
Atwater, CA 95301

pro se

At the Clerk of Court
United States District Court
Southern District of New York
500 Pearl Street
New York, N.Y. 10007

REC'D	13 MAR 2023	D
R	Y	Y.
FBI - NEW YORK		
FBI - NEW YORK		

10007-133093

Legal Mail